IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THE PLAN COMMITTEE IN THE JOHN DRIGGS REORGANIZATION CASE,	*	
Appellant,	*	
v.	*	Civil No. JFM 04-3383
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN THE DRIGGS REORGANIZATION CASE,	*	
Appellee.	*	

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OPINION

This is an appeal from an order of the Bankruptcy Court sustaining an objection by the Official Committee of Unsecured Creditors in the Driggs Corporation Case ("TDC Committee") to a proof of claim filed by the Plan Committee in the John Driggs Reorganization Case ("Plan Committee") in the Driggs Corporation bankruptcy proceeding. The question presented on appeal is whether a covenant made by The Driggs Corporation ("the Debtor") in a shareholders' agreement dated April 30, 1995 ("Shareholders' Agreement") that it would "conduct its business in compliance with all applicable law, rules, regulations and orders of governmental authorities" was breached when the Debtor committed various common law torts resulting in a substantial judgment against it for compensatory and punitive damages.[1] The Bankruptcy Court, finding

[1]Because I am affirming the Bankruptcy Court's construction of the language contained in the Shareholders' Agreement, I need not reach the TDC Plan Committee's other arguments that (1) the Plan Committee failed to prove its damages, and (2) the Plan Committee waived its right to recover damages against TDG in connection with the failure to redeem the preferred stock in issue when it sold the stock to Joanna Driggs, John Driggs's wife.

that the phrase "applicable laws" does not include common law tort law, answered this question in the negative.

I.

The Debtor was a wholly owned subsidiary of The Driggs Group, Inc. ("TDG"). When the Debtor filed its bankruptcy petition in January 2001, the Debtor, TDG, the Plan Committee - as well as John Driggs and John Driggs Company, Inc. ("JDC"), another TDG subsidiary - were parties to the April 30, 1995 Shareholders' Agreement. The Agreement was the successor to a preferred stock agreement that had been entered into and approved by the Bankruptcy Court in the John Driggs Chapter 11 bankruptcy proceedings.

The Plan Committee was created pursuant to the terms of the confirmed Chapter 11 plan in the John Driggs bankruptcy case. The Plan Committee's duties include administering and liquidating property of the estate in those proceedings. Among the assets of the bankruptcy estate was John Driggs's 100% ownership interest in TDG, the parent company of the Debtor. Under the Shareholders' Agreement, the Plan Committee had been issued preferred stock in TDG through which it was entitled to receive certain specified payments and a fixed redemption price.

The Shareholders' Agreement imposed certain requirements upon the Debtor, including those set forth in Section 1.9, which reads

> TDG and . . . [Debtor] will preserve and maintain in good standing its corporate legal existence and all of its rights, privileges and franchises which are necessary and material in the course of its business as it is currently being conducted and will conduct its business in compliance with all applicable laws, rules, regulations and orders of governmental authorities.

In or about October 1999, the Plan Committee learned that a tort judgment had been

entered against John Driggs and the Debtor in the Maryland state courts. *See Zachair, Ltd. v. Driggs*, 135 Md. App. 403, 762 A.2d 991 (2000), *cert. denied*, 363 Md. 206, 768 A.2d 54 (2001). Following entry of the judgment, the Debtor ceased making payments to TDG. TDG, in turn, ceased making payments to the Plan Committee and failed to make the redemption payment for the Plan Committee's preferred stock. Thereafter, the Plan Committee filed a claim, based upon the Debtor's alleged breach of the Shareholders' Agreement.

II.

This appeal presents the question of whether the Bankruptcy Court properly construed the term "applicable laws" in Section 1.9 of the Shareholders' Agreement as not including decisional tort law.

When language in a contract can reasonably be interpreted as having two or more meanings, a court must determine and give effect to the meaning reasonable people in the position of the parties would have intended. *See Calomiris v. Woods*, 353 Md. 425, 436, 727 A.2d 358, 363 (1999). In analyzing any particular clause, the court must be cognizant of the clause's relationship to the remainder of the terms in the contract. *E.g., Storage Tech. Corp. v. CCL Serv. Corp.*, 94 F. Supp. 2d 697, 701 (D. Md. 2000) ("a contract must be read as a whole in construing various provisions"). In addition to consideration of any particular canon of construction, contractual construction must also be based in large part on common sense. *See B&P Enters. v. Overland Equip. Co.*, 133 Md. App. 583, 616, 758 A.2d 1026, 1043 (2000).

There are two reasons strongly supporting a finding that the phrase "applicable laws" in the Shareholders' Agreement does not include decisional law. First, Section 1.9 is not the only provision in the Agreement requiring the Debtor to comply with the requirements of law.

Section 1.10 requires the Debtor to perform contractual obligations to which it is subject, unless the Debtor challenges its duty to perform in good faith. Because complying with contractual obligations is a duty that is likewise imposed by the common law, Section 1.10 would be redundant and unnecessary if Section 1.9 were read as broadly as the Plan Committee seeks to construe it.

Second, as the Supreme Court has pithily stated, "a word is known by the company it keeps." *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2002) (quoting *Gustafson v. Alloyd Co.,* 513 U.S. 561, 575 (1995)). In *Sprietsma*, the Court relied on this principle to hold that the words "law" and "regulation," when used together, indicate an intention only to refer to positive enactments by the legislature. 537 U.S. at 63. By the same token, the parties here used a phrase in the Shareholders' Agreement that brings to mind only positive enactments of law. Section 1.9 requires compliance with all "applicable laws, rules, regulations and orders of government authorities." "Rules, regulations and orders of government authorities" typically result from the legislative or administrative rule-making process. Thus, interpreting the immediately preceding term "applicable laws" in light of the company it keeps leads to the conclusion that the parties intended Section 1.9 to apply only to positive enactments.

The Plan Committee makes two primary arguments against construing the term "applicable laws" as not encompassing decisional tort law. First, the Plan Committee contends that such a construction is undermined by the so-called "last antecedent rule." That rule teaches that "a qualifying clause ordinarily is confined to the immediately preceding words or phrase – particularly in the absence of a comma before the qualifying phrase." *Sullivan v. Dixon*, 280 Md. 444, 451, 373 A.2d 1245, 1249 (1977). Thus, if the Bankruptcy Court's reading of Section

1.9 depended upon the presence of the phrase "of government authorities" after the word "orders," the Plan Committee's argument would be well founded. But that is not the case. As I have previously indicated, the words "rules, regulations and ordinances of government authorities" individually and collectively suggest that the parties were contemplating positive enactments when they included Section 1.9 in the Shareholders' Agreement. Therefore, although the Bankruptcy Court's reading of Section 1.9 may be reinforced by the presence of the words "of government authorities," its reading is not premised upon those words.

Second, the Plan Committee contends that the phrase "applicable laws" is typically interpreted to include both decisional law and positive enactments. To support this contention, the Plan Committee quotes pronouncements by various courts that the term "law" includes both decisional law and positive enactments. *E.g.*, *Warren v. U.S.*, 340 U.S. 523, 526 (1951) ("the term law in our jurisprudence usually includes the rules of court decisions as well as legislative acts"); *Lewis v. Brunswick Corp.*, 922 F. Supp. 613, 615 (S.D. Ga. 1996) ("the words 'law' and 'regulation' include common law claims"); *Kelley v. Leucadia Fin. Corp*., 846 P.2d 1238, 1242 (Utah 1992) ("The language 'any remedy . . . under applicable law' means all applicable statutory, common law, and equitable remedies."); *Denice v. Spotswood I. Quinby, Inc.*, 248 Md. 428, 433-34, 237 A.2d 4, 7 (1968) (law applicable to a contract includes "constitutional and statutory provisions and judicial precedents").

Each of the precedents relied upon by the Plan Committee is quite different from the present case. In *Warren*, the Supreme Court was required to interpret the phrase "national laws or regulations" as used in the Shipowners' Liability Convention. 340 U.S. at 525. In deciding that the phrase was intended to include "the rules of court decisions," the Court noted that there

was no apparent reason to give a more restrictive meaning to the phrase. *Id.* at 326-27. Here, in contrast, for the reasons I have previously stated, the context of the phrase "applicable laws" provides a compelling reason to restrict that phrase's meaning to positive enactments.

In *Lewis*, the court interpreted the words "law" and "regulation" as used in the Federal Boat Safety Act to include common law tort claims. 922 F. Supp. at 615. However, the Supreme Court, interpreting the same words in the same statute, found that the words "law" and "regulation" did not include common law tort claims. *Sprietsma*, 537 U.S. at 63. In *Kelley* the Utah Supreme Court did, as contended by the Plan Committee, interpret the words "any remedy provided . . . by applicable law" as used in a contract to mean "all applicable statutory, common law, and equitable remedies." 846 P.2d at 1242. *Kelley,* however, is distinguishable from the instant case because the phrase "applicable law" in *Kelley* stood alone. Unlike the present case, there was no contextual cue from surrounding words to suggest that the phrase "applicable law" had any other meaning.

Finally, *Denice* did not involve the interpretation of a specific contractual term at all. Rather, it involved the question of whether compliance with applicable building codes was an implied condition of a contract for the construction of a new home. It was only in reaching the non-startling conclusion that such compliance is necessary that the court expressed the opinion, quoted by the Plan Committee, that the law applicable to an agreement includes "constitutional and statutory provisions and judicial precedents." 248 Md. at 433-44, 237 A.2d at 7. *Denice* thus stands for nothing more than the fact that a contract is entered into against the background of the law; it says nothing about how particular language in a contract should be construed.

For these reasons, I find that the Bankruptcy Court properly construed the phrase

"applicable laws" in Section 1.9. Accordingly, its decision will be affirmed.

December 20, 2004
Date

/s/
J. Frederick Motz
United States District Court

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ORDER

For the reasons stated in the accompanying Opinion, it is, this 20th day of December 2004,

ORDERED that the decision of the United States Bankruptcy Court for the District of Maryland is affirmed.

/s/
J. Frederick Motz
United States District Judge